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Letter dated 13 May 2004 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter dated 27 February 2004 (S/2004/151). The Counter-Terrorism Committee has received the attached fourth report from Chile submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex). I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex

[Original: Spanish]

Letter dated 12 May 2004 from the Permanent Representative of Chile to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

In connection with your letter of 13 February 2004 concerning the third report of the Government of Chile submitted pursuant to paragraph 6 of Security Council resolution 1373 (2001), I have the honour to transmit herewith supplementary information concerning the questions and comments of the Committee regarding the report.

(*Signed*) Heraldo **Muñoz**
Ambassador
Permanent Representative

Enclosure*

Third supplementary report submitted by Chile pursuant to Security Council resolution 1373 (2001)

Introduction

On 13 February 2004, the Counter-Terrorism Committee sent a letter to the Government of Chile expressing its thanks for the second supplementary report submitted by Chile, on 24 July 2003, in response to the Committee's request pursuant to paragraph 6 of Security Council resolution 1373 (2001).

The Committee stated that, with the assistance of its panel of experts, it had considered carefully the reports previously submitted by Chile with regard to the measures it had taken to implement the resolution, as well as other relevant information.

In that connection, the Committee had prepared a series of comments and questions concerning the new list of priorities aimed at promoting the implementation of resolution 1373 (2001), focusing on effectiveness in the protection of the financial system, effectiveness of customs, immigration and border controls, and effectiveness of controls preventing access to weapons by terrorists.

Chile hereby submits its response to the Committee's new set of questions.

1. Implementation measures

Criminalization of terrorist acts and the financing of terrorist acts

1.1 The CTC would be grateful to receive a progress report on:

– The enactment of the bill to criminalize the collection or provision of funds for terrorism

Chile recently enacted the bill criminalizing the financing of terrorism by promulgating Act No. 19,906, for which purpose it amended Act No. 18,314, which defines terrorist actions and sets out the corresponding penalties, by adding an article 8, which imposes a penalty on anyone who solicits, collects or provides funds, by any means, directly or indirectly, for use in the commission of any terrorist offence. The penalty for this offence is medium-term rigorous imprisonment in the minimum or medium degree (up to three years), except where, by virtue of providing the funds, the individual(s) concerned are liable for an offence punishable by long-term rigorous punishment, in which case the latter penalty shall apply. The Act was published in the Official Gazette of 13 November 2003 and is attached as Annex I.

– The establishment of a Financial Analysis and Intelligence Unit

Act No. 19,913, published in the Official Gazette of 18 December 2003, established the Financial Analysis and Intelligence Unit (UAF). As mentioned in previous reports, the main aim of the Unit is to prevent the use of the financial system and other sectors of economic activity for the commission of the offence

* Annexes are on file with the Secretariat and are available for consultation.

of money-laundering or laundering of the proceeds of the offences described in the Act, which include terrorism in any of its forms. The Act is attached as Annex II.

The Act establishes the obligation for a range of entities, such as banks and other financial institutions, the Foreign Investments Committee, foreign exchange firms, money-remittance firms, general customs agents, etc., to report to the Unit any suspicious acts, transactions or operations identified in the course of their activities. The term "suspicious operation" is defined as any act, operation or transaction which, with respect to the uses and customs of the activity concerned, seems unusual or lacks apparent economic or legal justification, whether committed once or repeatedly.

Article 19 of the Act expands the definition of money-laundering as a specific offence, by providing as follows:

Long-term rigorous imprisonment in the minimum or medium degree and a fine of between 200 and 1,000 monthly tax units shall be imposed on:

(a) Anyone who in any way conceals or disguises the illicit origin of certain assets, in the knowledge that such assets derive, directly or indirectly, from the commission of constituent elements of any of the offences stipulated in Act No. 19,366, which penalizes illicit trafficking in narcotic drugs and psychotropic substances; Act No. 18,314, which defines terrorist actions and sets out the corresponding penalties; article 10 of Act No. 17,798 (Arms Control Act); Title XI of Act No. 18,045, on the stock market; Title XVII of Ministry of Finance decree-law DFL No. 3 of 1997 (General Banking Law); paragraphs 4, 5, 6 and 9, Title V, Book II of the Penal Code; and articles 141, 142, 366 quater, 367 and 367 bis of the Penal Code; or anyone who, in the knowledge of such origin, conceals or disguises such assets.

(b) Anyone who acquires, possesses, holds or uses such assets, for the purpose of profit, having been aware of their illicit origin at the time of receiving them. The same penalty shall be imposed for the actions described in this article if the assets derive from an action carried out abroad that is punishable in the place where it was committed and in Chile constitutes one of the offences set out in paragraph (a) above.

For the purposes of this article, assets shall be understood to mean any item with a definable cash value, whether tangible or intangible, movable or immovable, as well as legal documents or instruments conferring ownership of, or other rights to such items.

If the individual engaging in the actions described in subparagraph (a) is unaware of the origin of the assets, due to unavoidable negligence, the penalty indicated in paragraph 1 shall be reduced by two degrees.

The circumstance that the assets in question are one of the actions indicated in paragraph 1, subparagraph (a) above, does not need to be supported by a prior conviction but may be established in the same proceedings that are held to try the offence criminalized in this article.

Any individual who participated as author of, or accomplice to the action from which such assets originated and commits an offence provided for in this article as well, shall also be penalized in accordance with that offence.

– **The establishment of a National Intelligence Agency (ANI)**

The bill creating the National Intelligence Agency (ANI) was introduced in 2001, as item No. 2811-02, for consideration by the National Congress. The bill is now in its second constitutional reading, and is expected to become law soon.

– **The establishment of legal and/or administrative rules under which banks and financial entities would be required to adopt certain security measures**

As reported to the Committee established pursuant to Security Council resolution 1267 (1999), in implementation of resolution 1455 (2003), Chile believes that it is essential to establish legal and/or administrative rules designed to oblige banks and financial institutions to adopt security measures (such as monitoring, following up and reporting on suspicious bank or financial transactions; comprehensive and rigorous identification of bank account holders, mainly in respect of legal persons; retention of documents and records detailing bank transactions, etc.).

– **The implementation in domestic law of the international instruments relating to terrorism which Chile has already ratified, with particular regard to a list of the penalties prescribed for offences created in order to meet the requirements of the Conventions and Protocols. In this context please also outline the general provisions criminalizing terrorist activities.**

Chile has met its international commitments concerning the punishment of terrorism mainly through Act No. 18,314, defining terrorist actions, and its relevant amendments.

Act No. 18,314, a copy of which has already been sent to the Committee, entered into force on 17 May 1984. The Act defines the terrorist actions identified in Chile, sets out the corresponding penalties, and establishes the jurisdiction and the procedure for trying these offences. It has been the subject of a number of amendments, substitutions and repeals, notably those deriving from the provisions of Act No. 18,925, of 20 February 1990; Act No. 18,937, of 22 February 1990; Act No. 19,027, of 24 January 1991; and the recent Act No. 19,906, of 13 November 2003 implementing the International Convention for the Suppression of the Financing of Terrorism.

Offences

Under Chilean law, specified offences are deemed to be terrorist offences when certain circumstances apply.

These circumstances essentially apply when the offence is committed with the aim of instilling in the population, or in part of the population, the justified fear of being the victim of such offences or when the offence is committed in order to force the authorities to take decisions or impose demands on them. Also, the law assumes the desire to commit a terrorist offence when the criminal activity is carried out with the aim of instilling fear in the population in general, or when the offence is committed with certain means, such as explosive devices, weapons of mass destruction, toxic or corrosive substances or other substances capable of causing major devastation.

Among the specified offences, which fall into the category of terrorist offences when certain circumstances apply, there are certain common offences such as homicide, injury, kidnapping, detention of persons, abduction of minors, arson and destruction. Specific mention is also made of certain actions, such as the seizure of ships, aircraft, trains, buses or other means of public transport.

An attack on the life or physical integrity of the Head of State or other national authorities or internationally protected persons is also regarded as a terrorist offence, as are the planting, throwing or firing of bombs or other explosive devices that affect, or are intended to affect the physical integrity of persons or to cause harm.

Penalizing the financing of a terrorist offence

As a result of a very recent amendment (the aforementioned Act No. 19,906 of 2003), Chilean law imposes a prison sentence on anyone who solicits, collects or provides funds, by any means, directly or indirectly, for use in the commission of any terrorist offence.

Penalties

In general, the penalties for these terrorist offences are equivalent to the penalties imposed for common offences, increased by one or two degrees. In consequence, the range of penalties is very broad (there are as many penalties as there are common offences serving as the basis for terrorist offences). At any rate, it may be stated that, with the exception of terrorist financing, already referred to under question 1.1, all penalties would be greater than three years' rigorous imprisonment, with a maximum sentence of aggravated rigorous imprisonment for life. The most common penalty is 10 to 15 years' rigorous imprisonment.

The execution of terrorist offences

Chile's anti-terrorist laws also penalize, with respect to the execution of the offence.

Attempt

Article 7, paragraph 1, of Act No. 18,314 penalizes an "attempt" to commit a terrorist offence with the minimum penalty prescribed by the Act for an offence actually committed.

Conspiracy

The final paragraph of the aforementioned article 7 penalizes "conspiracy" to commit terrorist offences with the penalty prescribed for an offence actually committed, reduced by one or two degrees.

Threat

Lastly, article 7, paragraph 2, of the Act penalizes a "serious and credible threat" to commit a terrorist offence, which is penalized to the same degree as an attempt, with "serious and credible" being understood to refer to threats that implicitly or explicitly convince others of the intent to commit a terrorist offence.

1.2 **In response to subparagraph 1 (b) of the resolution, Chile in the third report refers to the bill criminalizing the financing of terrorism. In this regard, the CTC notes that for the purposes of this subparagraph it is not necessary that the funds actually be used to carry out a terrorist offence (see article 2, paragraph 3, of the International Convention for the Suppression of the Financing of Terrorism). The act is meant to be criminalized even if:**

- **The only related terrorist act takes place or is intended to take place outside the country;**
- **No related terrorist act actually occurs or is attempted;**
- **No transfer of funds from one country to another takes place; or**
- **The funds are of legal origin.**

The CTC would welcome an account of how the relevant provisions of the bill address these requirements of the resolution.

In accordance with the legal definition of the criminal offence of financing (new article 8 of Act No. 18,314), Chile, like the Committee, believes that it is not necessary that the funds actually be used to carry out a terrorist offence.

The legal definition of the criminal offence of financing was in fact conceived as a "truncated-outcome offence", based on the notion of a transcendent element of intent, such as "intent to use" [the funds]. This means that the act of soliciting, collecting or providing funds with such intent is sufficient, regardless of the funds' subsequent fate. It is therefore enough merely to solicit and collect funds, even if they are not subsequently delivered.

Furthermore, with respect to the Committee's questions, the offence is deemed to be present even though:

1. *The only related terrorist act takes place or is intended to take place outside the country*. This is the case, because the offence of financing is an autonomous offence. As already mentioned, it is sufficient that there be intent.

2. *No related terrorist act actually occurs or is attempted [by the alleged receiver of the funds]*. This is in accordance with the definition given at the beginning of this reply.

3. *No transfer of funds from one country to another takes place*. This is the case, because Chile's definition makes no stipulation regarding the destination of the funds or the means used to transmit them. On the contrary, it provides for "any direct or indirect means" of soliciting, collecting or providing.

4. *The funds are of legal origin*. This is the case, because there is no stipulation in that regard. It is enough that funds be involved, and the concept provided by the Convention applies for the rest.

1.3 **Within the context of the bill imposing a legal obligation on financial institutions and other intermediaries to report suspicious transactions when engaged in brokering activities (referred to in the third report at page 4), the CTC would appreciate further information concerning the criteria by which transactions are characterized as suspicious.**

With regard to the legal obligation of intermediaries to report suspicious transactions, it should be noted that article 3 of Act No. 19,913, creating the Financial Analysis and Intelligence Unit, and published in the Official Gazette on 18 December 2003, states that stock markets, securities dealers or securities brokers, among other entities, are obliged to report any suspicious acts, transactions or operations identified in the course of their activities.

The same article defines as a "suspicious operation" any act, operation or transaction which, with respect to the uses and customs of the activity concerned, seems unusual or lacks apparent economic or legal justification, whether committed once or repeatedly. In any event, it is for the Financial Analysis and Intelligence Unit to inform the entities referred to in this article of the situations that must be taken especially into consideration as indicating suspicious operations or transactions, although this situation has not yet occurred.

However, Circular No. 1,680 of 29 September 2003 of the Stocks and Securities Commission states that insurance firms, securities brokers, fund management companies and security deposit companies must take the necessary measures to maintain information about operations carried out by individuals or legal entities of any kind involving payment to the entity of a cash amount in legal tender or foreign currency, singly or in installments, exceeding the equivalent of US$ 10,000, with the exception of operations carried out by institutional investors, just as information must be maintained concerning operations by individuals or legal entities that may be characterized as suspicious.

For the purposes of the aforementioned Circular, a suspicious operation is understood to be any operation presenting elements that are unusual, irregular or abnormal with respect to the activities or account of the client or of any other individual participating in the operation, and/or that due to its lead time, financial design, structure or presentation, documentation used, alteration of previously registered facts, information provided or the lack of information, repetition or quantity of operations or unusual involvement of third parties or unknown persons, is or may be indicative of illicit origin of the resources used in the transaction or negotiation of the operation itself.

1.4 **Regarding the reference in the third report (at pages 6 and 7) to Act No. 19,366 on Illicit Traffic in Narcotic Drugs and Psychotropic Substances, it appears to the CTC that the relevant provisions concern only money-laundering cases. The CTC would like to emphasize that for the purposes of subparagraph 1 (c) of the resolution, the legal provisions in place should provide for the freezing of funds, regardless of origin, even if they are:**

- **Suspected of being linked to terrorism, but have not as yet been used to commit a terrorist act; or**
- **Linked to terrorist activities which have not as yet caused any material damage.**

The CTC would appreciate receiving an outline of the legal provisions, if any, which enable Chile to meet these requirements. In their absence, what steps does Chile intend to take to fulfil this requirement of the resolution?

Regarding the freezing of funds, as previously indicated to the Committee established pursuant to Security Council resolution 1267 (1999) and to the Counter-

Terrorism Committee, Chilean legislation provides only that, within the context of criminal proceedings, funds associated with crimes or ordinary offences can be seized, or confiscated; thus there are no special provisions permitting the freezing of assets by administrative decree.

In addition, article 24 of Act No. 19,913 establishing the Financial Analysis and Intelligence Unit empowers the Public Prosecutor's Office to request the judge to order any precautionary measures necessary to prevent the use, exploitation, assignment or allocation of any type of assets, securities or monies derived from the offences described in articles 19 and 20 of the Act, which include terrorist activities. One such measure is precisely the freezing of any type of deposit by banks or financial entities.

The response to the preceding question should also be borne in mind.

1.5 **Regarding the reference in Chile's report to article 292 ff of the Penal Code (third report at page 10), as well as to article 8 of Act No. 17,798, please outline how these provisions of Chilean law address the issue of recruitment to terrorist bodies, including:**

- **Through deception, such as representation that the purpose of recruitment is one (e.g. teaching) different from the true purpose.**

In this respect, it should be noted that article 292 of the Penal Code provides that the formation of any association with the intent of endangering public order, morality, life and property is an offence in and of itself.

Article 8 of Act No. 17,798 states that anyone who organizes, joins, finances, equips, trains, incites or encourages the creation and operation of private militias, combat groups or militarily organized parties armed with any of the items mentioned in article 3 — which lists the firearms that are prohibited — shall be liable to long-term rigorous imprisonment to any degree. Under this provision, persons who knowingly assist in the creation and operation of such groups are regarded as accessories to the offence.

The only question that arises is that of proof. The legal definition per se does not present any difficulty for the inclusion of this hypothesis. It suffices for the recruitment, equipping and organization to take place — whatever the means of achieving these objectives — in the context of the creation or formation of armed bands or gangs (whether terrorist or not).

- **Through other activities undertaken by people who do not actually belong to an unlawful association.**

In respect of persons who do not actually belong to an unlawful association, the new offence of financing or funding of terrorism may be applicable (article 8 of Act No. 18,314) to the extent that the activity consists of soliciting, collecting or disbursing such funds. Moreover, even if they do not belong to an unlawful association, the lesser penalty specified in article 8, paragraph 2, of Act No. 17,798[1] may apply. Lastly, in extreme situations which meet the legal definition, such persons can also be charged with participation in a resultant terrorist offence (murder, explosions, etc.).

[1] What is somewhat curious or quite unusual here is that, except in cases of terrorist financing, there can be such a thing as "participation without belonging".

Effectiveness in the protection of the financial systems

1.6 **Regarding the reference in the third report to the compilation of the regulations governing electronic transfer of information and funds, please outline how those provisions prevent terrorists and other criminals from having unfettered access to wire transfers for moving their funds, with regard to:**

- **Monitoring of the compliance of financial institutions with rules and regulations governing wire transfers (cross-border and domestic);**
- **Detecting such misuse when it occurs, in particular by ensuring that basic information on the originator of wire transfers is immediately available to relevant authorities.**

The protection of the system for wire transfers within Chile is governed by the relevant laws and by the compendium of financial regulations of the Central Bank of Chile. As to wire transfers from Chile, under article 39 of the organic law establishing the Central Bank of Chile, any person may freely conduct international exchange operations, which are understood to include buying and selling foreign currency and, in general, actions and agreements that create, modify or cancel an obligation payable in that currency, even if no funds are moved or wire transfers made from Chile abroad or vice versa.

Transfers of and transactions in gold or gold securities are also considered as international exchange operations, as long as they derive from gold denominations which may be used as a means of payment, even if that does not involve the transfer of funds or gold from Chile abroad or vice versa.

Accordingly, and taking the foregoing into account, it must be stressed that all matters relating to wire transfers, whether within or out of the country, are governed by the organic law establishing the Central Bank of Chile, the compendium of international exchange regulations, and the compendium of financial regulations issued by the Central Bank.

Regarding the transfer of shares and other negotiable instruments, the legal and regulatory provisions are as follows:

(a) Act No. 18,045 on the stock market stipulates in article 33 that stock transactions must be conducted in which stockbrokers and securities dealers participate in conformity with the rules and procedures established by law, as determined by the Stocks and Securities Commission in its general instructions and, where applicable, the provisions of the statutes and internal regulations of the stock exchanges or stockbrokers' associations to which they belong.

In keeping with the foregoing, article 34 of the Act stipulates that stockbrokers and securities dealers are responsible for determining the identity and legal capacity of the persons for whom they act as brokers, the authenticity and validity of the stocks they negotiate, the registration of the last owner with the issuing authority, where necessary, and, where applicable, the authenticity of the last endorsement.

Also, should they fail to comply with the aforementioned obligations, article 36 of the Act provides for the cancellation or suspension of the registration of the stockbroker or securities dealer up to a maximum period of one year, when the aforementioned Commission so determines, in a decision with reasons and after granting a hearing to the individuals concerned, especially in the case of serious

violations of the obligations imposed by the Act, and its supplementary rules and other regulations, such as non-compliance with the rules and procedures governing stock transactions or failure to carry out such transactions in good faith.

Additionally, it must be mentioned that in issuing general regulation No. 12, of 27 July 1982, the Stocks and Securities Commission instituted regulations that would govern stock transactions, the buying and selling of stocks and securities by brokers and agents on their own account and the records and information that they must provide. Also, the Commission's circular No. 1,064 requires that all operations conducted by an intermediary should be reported, and specifies that false reporting is subject to criminal penalties.

(b) Act No. 18,876 on stock deposits and custody and Supreme Decree No. 734, of 1991, of the Ministry of Finance on stock deposits govern deposit contracts, the operation of stock deposit and custody businesses, stock issuance and withdrawal and the internal regulations of such businesses, among other things.

Similarly, the Commission's general rule No. 77, which was amended by general rule No. 105, governs the account annotation system of stock deposit and custody businesses and the Commission's circular No. 1,377 provides instructions on the registration of agents and the form for the receipt and delivery of stock between depositors and agents.

(c) Many rules issued by the Santiago commercial and stock exchanges also deal with wire transfers, imposing appropriate penalties for non-compliance. Mention may be made of articles 29 and 30 of the handbook of the Santiago commercial and stock exchanges, articles 2.4, 16, 17 and 18 of the handbook of stockbrokers' rights and obligations, section (b), which sets out the instructions and procedures to be followed in handling stock market calls, the books and records to be kept by brokers, the requirements for safe-keeping of stocks, and so forth. Additionally, in articles 50 to 78, the regulations of the Santiago commercial exchange list the books and records that stockbrokers must keep and the prohibitions and obligations applicable to them.

1.7 **With regard to the implementation of subparagraph 1 (a) of the resolution, could Chile outline how its anti-money-laundering regime, as well as the measures which it has taken to supervise its offshore sector and its private limited companies, result in the effective implementation of the relevant provisions of the resolution? Please outline the financial rules and laws in force, aimed at preventing offshore banks and private limited companies from carrying out transactions linked to terrorist activities. The CTC would also be interested in receiving information concerning banks which, although not directly engaged in financial operations in Chile, are nevertheless involved in the receipt or transfer of funds held in foreign currency, through the use of bank accounts in other countries.**

The rules governing the identification of persons and entities that maintain current accounts and the opening of such accounts are described in detail in chapter 2-2 of the Commission's compendium of regulations attached hereto as Annex III.

1.8 **Within the context of the effective implementation of subparagraph 1 (a) of the resolution, please explain the rules for identifying persons or entities which maintain bank accounts; on whose behalf a bank account is maintained (i.e. the beneficial owners) or who are the beneficiaries of transactions**

conducted by professional intermediaries; as well as any other person or entity connected with a financial transaction. Please outline any procedures that enable foreign law enforcement agencies or other counter-terrorist entities to obtain such information in cases where terrorist links are suspected.

Regarding the rules for identifying persons or entities who are the beneficiaries of transactions conducted by professional intermediaries (taking professional intermediaries to mean stockbrokers and securities dealers), in accordance with the rules and regulatory provisions described earlier under question 1.6 (a), (b), and (c), it is possible to identify the parties to a transaction. That notwithstanding, the final determination or assignation of the transacted instruments to a specific beneficiary client will always be made by the securities broker in the case of transactions carried out on the orders of various clients or of their portfolio managers.

Finally, regarding the procedures that enable foreign law enforcement agencies or other counter-terrorist entities to obtain such information in cases where terrorist links are suspected, it should be noted that in accordance with the provisions of article 2 of Act No. 19,913, information obtained by the Financial Analysis and Intelligence Unit can be used only for the purposes set forth in that Act, and may in no circumstances be divulged or supplied to agencies or bodies other than the Public Prosecutor's Office. In the case of the Stocks and Securities Commission, by virtue of article 4 (s) of decree law No. 3,538, the Commission can provide technical assistance and cooperate in the monitoring of infringements against the stocks and securities legislation when so requested by foreign regulatory or supervisory entities or international bodies under agreements or memoranda of understanding which have been concluded for technical cooperation, training and mutual assistance in areas under the purview of the Commission.

1.9 **With regard to the effective implementation of subparagraph 1 (d) of the resolution, the CTC would be grateful to know whether Chile has taken judicial action against non-profit organizations on account of their suspected involvement in the financing of terrorism. If the answer to this question is in the affirmative, could Chile outline the relevant procedures used as well as provide information concerning the outcome of such actions. The CTC would also welcome examples of cases in which the sanctions against those organizations were applied. Are there procedures in place to respond to requests from other Governments to investigate particular organizations that are suspected of being linked to terrorism? In regard to the auditing and monitoring of the collection and use of funds by those organizations, how does Chile coordinate the work of the various bodies entrusted with this work?**

Currently, the Barakat case, brought in late 2001 on allegations of financial support of international terrorism, has been temporarily adjourned. In this regard, the last investigation was conducted in March 2003 when 26 businesses in the Iquique free trade zone were searched, and financial and commercial information was seized. The investigation of the information gathered did not yield conclusive data.

1.10 **In the context of Chile's reply in the third report (at page 5) to the question regarding subparagraph 1 (d) of the resolution, could Chile please indicate whether its laws require money remittance/transfer services to be registered or licensed? Please outline also the legal provisions and administrative mechanisms which Chile has put in place to prevent informal**

money/value transfer systems from being used for the purpose of the financing of terrorism. Please indicate which authorities are responsible for enforcing the compliance of money transmission services, including informal money or value transfer systems, with the relevant requirement of the resolution.

Please refer to the reply to question 1.6, which indicates that all matters relating to wire transfers, both within Chile and abroad, are governed by the organic law establishing the Central Bank of Chile, the compendium of international exchange regulations and the compendium of financial regulations issued by the Central Bank, and that with regard to the transfer of shares and other negotiable instruments, the regulations that apply are Act No. 18,045 on the stock market and Act No. 18,876 on stock deposits and custody.

1.11 **The CTC notes from the first report (at page 7) that, for the purposes of implementation of the resolution and preventing terrorist activities, Chile has used and distributed the list of persons and organizations linked to international terrorism. Does Chile have the authority to freeze the assets of terrorists and terrorist organizations that are not on the lists of the United Nations Security Council? The CTC would appreciate copies of the laws and regulations that are relevant to this area. Please also outline the procedures used to proscribe foreign terrorist organizations (other than those listed by the Security Council) if any, as well as provide data regarding the number of organizations involved and/or corresponding examples. How long does it take to proscribe a terrorist organization based on information supplied by another State?**

Chile, as indicated earlier, has no legal regulations allowing for the freezing of terrorist funds by administrative decree.

On the other hand, article 24 of Act No. 19,913 establishing the Financial Analysis and Intelligence Unit empowers the Public Prosecutor's Office to request the judge to order any precautionary measures necessary to prevent the use, exploitation, assignment or allocation of any type of assets, securities or monies derived from the offences described in articles 19 and 20 of the Act which are under investigation. One such measure is precisely the freezing of any type of deposit by banks or financial entities.

Lastly, article 25 of Act No. 19,913 makes applicable to the offences described therein, all the regulations of Act No. 19,366 on the illicit trafficking of narcotic drugs and psychotropic substances and the provisions contained in any other law replacing or amending it, inter alia, the investigation of these offences involving the cooperation of State agencies, the powers of the Public Prosecutor's Office to conduct operations outside the national territory with the prior consent of the other State or without the prior knowledge of the person concerned and international cooperation in general (waiving of bank secrecy etc.).

Effectiveness of customs, immigration and border controls

1.12 **Implementation of paragraphs 1 and 2 of the resolution requires the operation of effective customs and border controls with a view to preventing and suppressing the financing of terrorist activities. Does Chile impose controls on the cross-border movement of cash, negotiable instruments, precious stones and metals (for example, by imposing an obligation to make a declaration or to**

obtain prior authorization before any such movements take place)? Please also provide information concerning any relevant monetary or financial thresholds.

With regard to controls on the cross-border movement of cash, negotiable instruments, precious stones and metals, the National Customs Service has the following instructions:

• Precious stones and metals

This merchandise must be declared to Customs and is subject to the payment of duties and taxes, an operation which can be processed directly in Customs, up to a value of US$ 500 FOB (for commercial purposes) and up to US$ 1,500 (non-commercial purposes). For higher amounts, the processing must take place through a customs agent.

• Money and financial instruments

The Customs Service has a paper form entitled "Sworn declaration of money carried by travellers entering the country" in which the traveller declares the amount of cash and other financial instruments he is carrying, if the amount exceeds US$ 10,000. He then signs the document and provides identification (name, identification number, nationality, residence, telephone, flight and origin of flight). This form is also sent to the Ministry of the Interior.

• Customs inspections

The Customs Service carries out physical and documentary inspections on the basis of risk profiles in order to verify that what is declared is what is actually being carried or is entering the country.

1.13 **In regard to preventing the movement of terrorists, please outline legal and administrative procedures developed by Chile to protect the port facility and ships, persons, cargo, cargo transport units, off-shore installations and ships' stores from the risks of terrorist attacks. Please outline any procedures adopted in Chile for: controlling access to ships; monitoring restricted areas to ensure that only authorized persons have access; and supervising the handling of cargo and ships' stores. Do competent Chilean authorities have procedures in place for a periodic review of transport security plans, with a view to keeping them up-to-date? If yes, please outline.**

The Directorate of the Maritime Territory and Merchant Marine of Chile is currently in process of implementing security measures to comply with the International Ship and Port Facility Security (ISPS) Code, at maritime terminals and in respect of ships flying the Chilean flag which are engaged in foreign trade.

The procedures to control access to ships are carried out through the respective agencies representing them, which have to submit requests for authorization to the local maritime authorities. Subsequently, upon entry, they undergo control by the equipment and personnel of port facilities.

In the case of passenger ships, some special terminals have been fitted out with X-ray equipment and metal detector gates, with restrictions on their use; there are also restricted areas for the operation of such ships.

As regards the control of dock workers, the dockside agencies must request the Directorate for the Maritime Territory for access by sending the relevant payroll information via electronic mail and, once authorization has been given, dock workers must use their passes with a scannable bar code so that the entry stations can authorize their access. This activity is supervised by personnel of the maritime terminals, without prejudice to the monitoring and enforcement functions carried out by maritime police personnel.

Monitoring of restricted areas is carried out by technological means, such as remote control television cameras, along with motorized and foot patrols and, sometimes, the use of small watercraft.

Supervision of the handling of cargo is carried out during patrols by the maritime police and, additionally, with the presence of risk prevention personnel and supervisors of the dockside companies themselves.

With regard to the review of existing security plans in maritime terminals, they are currently being updated in accordance with the provisions of the Code.

1.14 **The CTC would be interested in learning how the National Customs Service and other relevant bodies deal with problems of deception, such as the under-invoicing of imports and the over-invoicing of exports, bearing in mind that such methods can be used to divert resources to support terrorism in Chile and throughout the world.**

The National Customs Service has the following tools to deal with the risks of illicit manoeuvres, especially the under-invoicing of imports and the over-invoicing of exports.

- **Risk management**

The Customs Service carries out enforcement on the basis of the use of risk management, in accordance with the recommendations of the World Customs Organization and other international bodies with regard to combating terrorism. It relies on an approach of identifying the main risks, designed to prioritize events which have the greatest likelihood of occurring and the gravest consequences. The risk parameters most commonly used for the specific selection of customs operations to be carried out are as follows:

- Entities participating in international trade: importers/exporters; trucking companies; legal representatives;
- Locations involved in operations: countries of destination/origin/acquisition; ports of embarkation/disembarkation;
- Goods described in the customs documents: name/make/model/type/variety/quantity; tariff classification; identification of packages/type/brands/numbers.
- Other elements/parameters indicated in the customs documents and in the files of background documents.

Intelligence and analysis of information

The Customs Service uses the methodology of analysis of intelligence, in accordance with the guidelines of WCO with regard to the Regional Intelligence Liaison Office (RILO) network, using various sources of information (public and

private) and databases (internal and external). In order to improve these analyses, an electronic tool is being acquired in the form of a computer package which will be used to improve the detection of customs risks, using the concept of business intelligence.

Customs information in electronic format

Electronic information is available in most customs operations, especially entry and departure of goods for enforcement analysis. Electronic transmission complies with the standards of the United Nations directories for electronic data interchange for administration, commerce and transport (EDIFACT), adapted to the requirements of the Chilean Customs Service. There is also advance information from some of these customs operations which makes it possible to develop risk analyses and intelligence prior to the movement of goods through the national territory. In order to analyse information from these operations, electronic tools are used to extract the data on the basis of dynamic search parameters.

Selectivity

The Customs Service has a mixed system of selection of high-risk customs operations for analysis or review. The methods of selection are as follows:

- Automatic selectivity system (on line selection filters which generate physical and documentary inspections by customs);
- A posteriori selectivity system (for the analysis of customs and investigation documents);
- Selectivity system by economic sector (risk markers on customs documents for possible investigations, selections and alerts);
- Manual selectivity (option for selection by operational officers if there are risk events on the ground);
- Selectivity with the support of artificial intelligence networks (pilot project);
- Random selectivity.

Traceability and logistics of operations

The latest electronic advances for customs operations involve successive and monitored customs checks, which will allow for better follow-up of operations. This system is under construction. Furthermore, mechanisms are being established to promote and improve ongoing coordination with bodies participating in the logistical distribution chain, on the basis of WCO guidelines in the area of terrorism.

Description of merchandise

Tariff liberalization has been carried out on the basis of the recommendations of WCO in order to better describe and differentiate the goods involved in customs operations, which will make it possible to improve the effectiveness of customs selections and their analysis. In addition, technical means are being used for the description of goods in high-risk operations, such as specific descriptors and categories, an initiative which is currently being implemented in a partial manner.

Links with other agencies

At present, the operations of other national enforcement agencies (currently seven) are being automated on line and in real time with the customs systems in order to verify authorizations and carry out checks on line. These links follow guidelines from the Government regarding Single Windows for users, and also international policies of using ongoing information exchange as a tool to enhance risk analysis and generate early alerts.

Internal and external coordination

Again following international recommendations in the area of terrorism, the Customs Service is working to generate strategic alliances with foreign customs services and with other national agencies involved (government institutions, participating private companies, trade facilitators). In addition, the Service is involved in various initiatives and exchanges with international bodies (WCO, RILO and national contact points (NCP), Asia-Pacific Economic Cooperation (APEC) and the European Community, the United States of America, and others).

Instruction and training

The Customs Service frequently organizes capacity-building courses in order to improve the quality of enforcement work, promote familiarity with the required documentation and packaging (authorizations, manifests, forms, coordination of documentation) and also training in new enforcement techniques. The orientation consists of exchanges of knowledge and experience of best practices using benchmarking, following the recommendations of the various international agencies, an element proposed by the Chilean Customs in the context of APEC 2004.

WCO/RILO network

The RILO network of WCO is an international network which provides assistance and cooperation in the area of laws, communications and exchange of information. Within this network, monthly reports are prepared with data on seizures and alerts, analysis of trends, details on national contact points and the fraud situation in the region, and articles for urgent circulation. It provides the necessary information to improve selective search, judicial operations after investigation, and determination of profiles. The Chilean Customs Service is the regional headquarters for South America in this respect.

1.15 **The CTC would be pleased to receive an outline of Chile's legal provisions governing the granting of citizenship to foreigners. Is a foreigner, who has been granted citizenship rights in Chile, allowed to change his or her name? How does Chile establish a person's true identity before authorizing such a change in name?**

Nationality and citizenship

The provisions on nationality are laid down in Chapter II of the Political Constitution of the Republic, article 10, paragraph 1, of which establishes the principle of *jus solis*, which means that individuals have the nationality of the country in which they were born, regardless of the nationality of their parents.

In the same paragraph, two exceptions are made to this general rule: with regard to children of foreigners who are working in Chile in the service of their countries, and also children born in Chile to transient foreigners; such children, despite having been in the national territory, do not have Chilean nationality, although they may opt for it within one year after reaching 21 years of age.

Article 10, paragraph 3, governs the situation of children of Chileans born abroad, who, despite having been born in a foreign territory, by the mere fact of residing in Chile for a period of over one year are granted Chilean nationality. This provision recognizes the principle of *jus sanguinis*.

Lastly, article 10, paragraph 4 establishes that nationality may be obtained with a nationalization card and paragraph 5 establishes the possibility of special grant of nationality under the law.

Procedures for obtaining Chilean nationality

Supreme Decree No. 5,142, published in the Official Gazette of 29 October 1960, sets forth the amended text of the provisions on the acquisition of nationality by foreigners. It establishes the following procedures:

Option of Chilean nationality

The procedure for exercising the ability to opt for Chilean nationality in accordance with the provisions of article 10, paragraph 1, of the Political Constitution of the Republic, is indicated in article 10 of Supreme Decree No. 5,142 of 1960.

Obtaining nationality with a nationalization card

The procedure for requesting the nationalization card established in article 10, paragraph 4, of the Political Constitution of the Republic, is indicated in article 2 of Supreme Decree No. 5,142 of 1960.

Change of name for persons who obtained Chilean nationality by means of a nationalization card

Persons who have obtained Chilean nationality by means of a nationalization card, like any other Chilean, may request a change of name, in accordance with the provisions of Act No. 17,344, published in the Official Gazette of 30 May 2000.

Authorization for a change of name is required in cases such as the following:

- The name or names in use are ridiculous, comic, or cause moral or material indignity to the person concerned;
- When the person who requests the change has been known for more than five years by names other than his own names;
- In cases of recognition of children born out of wedlock;
- Furthermore, in cases of persons whose first or last names are not of Spanish origin, they may request authorization for translation of the names into Spanish, or may change the names if their pronunciation is very complicated for Spanish speakers.

The judge with major or minor civil jurisdiction in the petitioner's district of residence has to review the arrangements laid down in Act No. 17,344.

- **How the true identity of a person is established before authorizing a change of name**

Act No. 17,344 establishes a procedure whereby the judge must make inquiries about the identity of the applicant both in the community, and with the competent authorities, through a report from the Civil Registry and Identification Service, which will refer to the applicant's background (article 2).

The Civil Registry and Identification Service has information about the true identity of the applicant, since the data used are derived from an analysis of the request for the nationalization card made by the Ministry of the Interior, along with an analysis of any background information available on the applicant either in Chile or in any foreign country. This background analysis is carried out by the *Policia de Investigaciones*, an institution which, under its legal mandate, is responsible for gathering information available through the Interpol system for every request made in Chile for a nationality card.

Effectiveness of controls preventing access to weapons by terrorists

1.16 **Subparagraph 2 (a) of the resolution requires each Member State, inter alia, to have in place appropriate mechanisms to deny access to weapons to terrorists. With regard to this requirement of the resolution, as well as to the provisions of the Convention on the Marking of Plastic Explosives for the Purpose of Detection and the International Convention for the Suppression of Terrorist Bombings, please provide the CTC with information relevant to the following questions:**

A) **Legislation, regulations, administrative procedures**

What national laws, regulations and administrative procedures exist to exercise effective control over firearms, ammunition, and explosives during transit and re-transfer?

In this connection it should be noted that Act No. 17,798, article 4, indicates that the Directorate of National Mobilization and the enforcement authorities exercise control over such items during transit through the national territory and at the stage of re-export, which occurs when an item cannot be admitted into the country because it does not comply with legal requirements regarding quality or other aspects, and must be either re-exported or destroyed, at the owner's choice.

Transport of such items must fulfil the requirements established under articles 103 et seq. of the supplementary rules of the Act pertaining to the respective method of transport: land, sea or air. Transportation of such items through the national territory en route to another country must satisfy security controls along the way until the items leave the national territory.

What national measures exist to prevent the manufacture, stockpiling, transfer and possession of unmarked or inadequately marked small and light weapons; other firearms, their parts and components and ammunition; plastic explosives; other explosives and their precursors?

With respect to these matters it should be noted that articles 2 and 4 of Act No. 17,798 on the control of arms and similar items include the following provisions concerning control by the Directorate of National Mobilization and the enforcement authorities:

Weapons manufacture is governed by strict control measures under articles 22 to 28 of the supplementary rules, which also apply to their installation and to the operation and production of firearms. Firearms, including their parts and components, must be marked for the purposes of authorization of sale and inclusion in the National Firearms Register.

Stockpiling and transfer of weapons must comply with authorizations from the bodies cited above.

With respect to precursors, chemical substances capable of being used to manufacture explosives or to serve as a basis for the production of ammunition, projectiles, missiles or rockets, bombs and cartridges are subjected to controls under article 2, paragraph (e), of the Act.

B) Export control

Please specify existing mechanisms for the exchange of information regarding sources, routes and methods used by traders in arms.

In this respect, the only items that are controlled are those intended for export, under the provisions set out in article 4 of the Act and article 43 of the supplementary rules. Military materiel must also be accompanied by an end-user certificate.

With respect to the exchange of information regarding sources, routes and methods used by traders in arms, the Act contains no provisions on this subject, which falls within the purview of national law enforcement agencies.

C) Brokering

What national legislation or administrative procedures exist to regulate the activities of those who engage in brokering firearms and explosives within national jurisdiction and control? Please outline the relevant procedures with regard to the registration of brokers, and the licensing or authorization of brokering transactions.

National legislation has no provisions governing activities by intermediaries in the import, purchase or sale of weapons; yet it has not ruled out the possibility that any person acting under Act No. 17,798 can grant a proxy empowering a third party to represent him in any transaction pertaining to matters regulated by the Act. For that purpose, all that is required is a legally recognized proxy. The proxies do not have to be registered anywhere.

Does Chilean law require the disclosure of the names and locations of brokers involved in transactions concerning firearms or explosives, on the import and export licences or authorization, or any of the accompanying documents?

Since, as indicated above, third-party representation has not been provided for, except in general terms under civil law, there are no related transparency

requirements such as the disclosure of names and locations. Moreover, in the case of applications submitted to the authorities exercising control over weapons and explosives, the competent officials incur criminal liability, under Act No. 17,798, article 16, if they disclose facts and information contained in such applications.

Do existing legal provisions allow for the sharing of relevant information with foreign counterparts in order to enable cross-border cooperation in preventing illegal shipments of firearms, their parts and components and ammunition, as well as explosives and their precursors?

Act No. 17,798, article 16, prohibits the Directorate of National Mobilization and the enforcement authorities, and their personnel, from revealing information about activities they are required to monitor. They must, however, provide accurate information to courts of law and law enforcement agencies investigating reports of illicit activities.

D) Stockpile management and security

Please outline legal provisions and administrative procedures in Chile that provide for the security of firearms, their parts and components, ammunition and explosives and their precursors at the time of manufacture, import, export and transit through its territory.

In relation to this question, we should point out that all manufacture, import, export or transit of firearms is authorized by the Directorate of National Mobilization, and must comply with the requirements indicated above, which allow for adequate control.

In the case of a firearm whose owner wishes to transfer it to another residence, a *Guía de Libre Tránsito* (unrestricted transit permit) will be issued, duly registering it for the purposes of control.

What national standards and procedures exist for the management and security of firearms and explosives stocks held by the Government of Chile (in particular, held by armed forces, police, etc.) as well as by other authorized bodies?

The controls under Act No. 17,798 do not apply to the Chilean armed forces or the *Carabineros* and apply only partially to the *Policía de Investigaciones* and the *Gendarmería*, in the manner specified in article 3, subparagraphs 3, 4 and 6, of the Act; they are therefore regulated by the institutional provisions of that Act.

With respect to other bodies authorized to bear arms, mention should be made of Decree-Law No. 3,607, which refers to private security personnel. Bearing of arms by such personnel is regulated by the Directorate of National Mobilization for the purposes cited in the Decree-Law. The respective activities of hunters, sportsmen and collectors are also regulated by that body and its enforcement authorities.

Explosives are governed by the provisions cited above, through registers of importers, exporters, manufacturers, transporters and consumers of these items, under Act No. 17,798, articles 2 and 4.

Control of explosives and chemical products is dealt with in articles 68 to 122 of the supplementary rules of the Act, and includes provisions relating to use of

explosives, priming powder, safety distances, warehousing, destruction of controlled items and transport.

Has Chile implemented, using risk assessment principles, any special security measures on the import, export and transit movement of firearms, such as conducting security checks on the temporary storage, warehousing and transport of firearms? Does Chilean law require persons involved in these operations to undergo security vetting? If yes, please give details.

Imports are controlled through a system of prior authorization, as well as requirements governing quantity, type of weapons and pro forma invoices.

In the case of commercial transactions, importers must register in a national register of importers and arms traders, which is verified by the National Customs Service, before goods are admitted into the country. Meanwhile, goods are held in safe keeping in customs areas.

Export of firearms is governed by similar provisions, except for military materiel, which also requires an end-user certificate.

Transport of firearms requires only a *Guía de Libre Tránsito*, issued by the enforcement authority, which indicates the point of exit and the destination within the national territory.

Firearms in transit are also controlled by a *Guía de Libre Tránsito*, and do not require safe keeping or protection, unless the owners so request the enforcement authority, and the Chilean *Carabineros* agree to the request.

E) Law enforcement/illegal trafficking

What special measures are used by Chile to prevent and suppress illegal trafficking in firearms, ammunition and explosives that may be utilized by terrorists?

In this connection, it should be noted that the control mechanisms described above allow for prevention and suppression of illegal trafficking in firearms, ammunition and explosives for the purpose of terrorist activities, as well as action by the *Carabineros*, the *Policía de Investigaciones* and the National Customs Service to detect illegal activities.

In terms of suppression, the criminal offences are defined in Act No. 17,798, articles 8 to 17, and in the provisions contained in Act. No. 12,927 of 1975 on Internal State Security, as well as Act. No. 18,314 of 1984, which defines terrorist acts and establishes the penalties. Such acts include illegal use of weapons and explosives.

Do Chilean law enforcement agencies cooperate with the Interpol Weapons and Explosives Tracking System?

This matter falls within the purview of the *Policía de Investigaciones*, which receives the appropriate information in each case.

2. Assistance and guidance

The Government of Chile takes note of the importance that the Committee attaches to the provision of assistance and advice in connection with the

implementation of resolution 1373 (2001). It is also grateful for the information provided on contacting the United Nations Office on Drugs and Crime, Terrorism Prevention Branch, under the Global Programme against Terrorism, regarding its request to receive information on comparative law with a view to being able to freeze assets at the administrative level.

The Government will contact the Terrorism Prevention Branch in the near future, and will inform the Committee, if necessary, of any areas in which it may need advice for the purpose of implementing the resolution.

3. Submission of a further report

In order to comply with paragraph 3 of the Committee's letter referred to in paragraph 1 of this report, the Government of Chile transmits this report, along with its annexes, in response to the questions and comments set forth in the aforementioned letter; the report may be issued in its entirety.

Once again, the Government of Chile reiterates its willingness to cooperate with the Counter-Terrorism Committee of the Security Council, in compliance with resolution 1373 (2001), and pledges its cooperation in future consultations on this issue.